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investment institutions to stimulate sluggish productivity merits wider consideration. Canada has already chartered a national investment corporation; your own government is likewise considering proposals to infuse new government capital into depressed sectors. We can and must prevent domestic commercial failures from precipitating an international economic collapse.

Whatever our differing interests, we must not resort to the destructive "beggar-thy-neighor" policies of the 1930's. Attempts to shift disquieting trade deficits from one country to another—whether through import barriers or currency devaluation—can only bring on worldwide depression. We must promote an orderly economic recovery for the benefit of the whole family of nations.

Sixth: Restoring health to our financial institutions is an urgent objective in the months ahead. The orderly evolution of Euromarkets will require concerted action on the part of central bankers in several areas: more reliable information on the market's operations; the development of liquidity standards to bolster confidence in its institutions; and continued cooperation toward establishing some international "lender of last resort."

Seventh: There is a compelling need for new policies to promote stable, safe and diversified investment of oil producer funds. To dispel present uncertainty we must devise uniform guidelines which will apply to investments by the producing states in our respective national economies. These guidelines must provide consuming nations with the assurance of continued control over their own essential financial infrastructures, and, at the same time, recognize the legitimate concerns of producing nations in guarding against the real risks of inflation and currency fluctuations.

Eighth: The Special Council must explore means of assisting those nations facing serious liquidity problems as a result of concentrated oil producer investment in a handful of countries and markets. A major effort—preferably international, but if necessary on a more limited basis—must be made to encourage direct investment in the economies of those nations which are increasely threatened by their inability to attract funds in private markets.

Ninth: We cannot overlook the plight of the developing countries. The international dialogue now underway in Rome on the critical issue of food is a first step; rapid implementation of cooperative projects to prevent famine and restore hope must be the next.

Joint efforts to build fertilizer plants in the Persian Gulf deserve careful consideration. The producing nations could commit natural gas—which is now being flared and wasted—as the feed-stock. Industrialized nations could commit the necessary manpower, technology and equipment.

Tenth: We should initiate a review of the changing role of the multinational corporation, especially the international oil companies, and prepare standards of conduct which will prevent private gain at public expense, promote orderly world commerce, and better identify the appropriate regulatory spheres of the respective countries in which these corperations are based and operate.

The initiatives presented in this agenda are made in the tradition of bipartisan foreign policy which my nation has historically observed and to which I personally subscribe.

Throughout all aspects of our cooperative endeavor, we need to maintain a continuing dialogue with oil-producing nations and less-developed countries on the critical issues of fuel, finance, and food. The goal of this dialogue should be a new set of arrangements which merit mutual support. In efforts to accommodate conflicting views, however, we will not submit to the dictates of any group of nations which threaten the security of individual countries, or undermine the stability of the international financial system and the world economy.

The oil-producing nations cannot achieve their own varied objectives without the cooperation and assistance of the major consuming nations. This gives us both leverage and opportunity to influence the policies and conduct of the oil producers if we choose to do so—and if we act together.

The agenda I have proposed—our common agenda—offers us the opportunity to promote the economic well-being of all peoples. Let us not succumb to the paralysis of pessimism. Let us use our combined assets and ingenuity to shape a future in which all nations may flourish.

In conclusion, let me add these words:

There is, above all, one abiding faith that joins our two peoples. It is the commitment to individual liberty that time and time again has brought us together in the cause of human rights.

Freedom imposes great obligations on those fortunate enough to have it.

If we care only for ourselves, what are we?

If we do not speak for freedom, who will?

And if not now, when?

If new relations between East and West are to mature into long-term peaceful cooperation, there must be progress toward the freer movement of people and ideas across international borders. In Geneva, at the European Security Conference, your government and mine must join together, along with the free nations of Europe, to press for lowering the artificial barriers that now divide East and West. In this enterprise we, together, are privileged to represent what is most noble in our traditions.

Having begun with your Winston Churchill, I shall close with our Harry Truman. I believe that both men would have approved. On November 11, 1049, twenty-five years ago today, President Truman had this to say:

"The task of achieving greater justice and freedom will be long and it will be difficult. In various parts of the world today, human rights and freedom are being deliberately violated and suppressed. These things are not only morally wrong—they threaten to undo the slow and hard-won achievements of civilization. There can be no higher challenge than to build a world of freedom and justice, a world in which all men are brothers. That is the goal toward which we must strive with all our strength."

In 1945 a truck driver named Bevin entrusted the security of Europe to a haberdasher named Truman with the words, "Over to you." Now, nearly thirty years later, the watchword among Pilgrims must be: over to all of us.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

Mr. CURTIS. Mr. President, on behalf of the distinguished junior Senator from New York (Mr. BUCKLEY) I ask unanimous consent that a number of articles and press releases relating to the Family Educational Rights and Privacy Act of 1974, of which I was a cosponsor, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

Caspar Weinberger, Secretary of Health, Education, and Welfare, announced today that Thomas S. McFee, Deputy Assistant Secretary for Management Planning and Technology, will assume responsibility for the office mandated by the Family Educational Rights and Privacy Act of 1974.

This office will serve as the focal point for investigating, processing, and reviewing violations of the Act. It also will handle inquiries from individuals seeking information related to the protection of the rights and privacy of parents and students.

The office will be ready to function on November 19, 1974, the effective date of the law. Information requests should be addressed to Mr. McFee, c/o Room 5660, HEW North, 330 Independence Avenue, SW., Washington, D.C. 20201.

The Secretary also reiterated the Department's firm support for the Family Educational Rights and Privacy Act he stressed the President's endorsement of this approach to ensure the rights of individual students and parents and noted that it is consistent with the continuing efforts of the Domestic Council Committee on the Right of Privacy on which he serves.

The Secretary said the Department will publish its notice of proposed rule making to protect the rights of privacy of students and their families in connection with Department-assisted surveys and data gathering activities on the date agreed upon with Congress.

He also directed immediate development of regulations on those other sections of the law relating to access to official school records, hearings to challenge their content, and the release of personally identifiable data without student or parental consent. This second set of regulations will be published as a notice of proposed rule making as soon as possible, and in any event, no later than the end of this year. It is hoped that such regulations will provide members of the education community with the guidance necessary for them to establish their own procedures to ensure compliance with the law.

In addition, the Secretary directed the Department to work closely with Senator James L. Buckley (author of this Act), members of the Senate and House education committees, and representatives of public interest groups to develop any needed clarifying amendments. If the legislation is modified, the Department would, of course, revise its regulations.

CUMULATIVE RECORDS: ASSAULT ON PRIVACY

(By Diane Divoky)

It all started innocently enough back in the 1820s, when schools in New England began keeping registers of enrollment and attendance. In the 150-odd years since, the student record has grown to grotesque proportions. Like Frankenstein's monster, it now has the potential to destroy those it was created to protect.

Educators have constructed this monster in the name of efficiency and progress, adding a piece here and there, tinkering with new components, assuming all the while they were creating a manageable servant for school personnel. But what they failed to foresee was the swift development of modern communications technology and the widening employment of that technology by a social system increasingly bent on snooping.

The growth of the record into an all-inclusive dossier came in response to the increasing centralization and bureaucratization of schools. Another contributing factor was the emergence of education's ambitious goal of dealing with the "whole child." Out of that context grew such specific actions as the NEA's 1925 recommendation that health, guidance and psychological records be maintained for each pupil, and the American Council on Education's 1941 development of record forms that gave more attention to behavior descriptions and evaluation and less to hard data such as subjects and grades. By 1964, the U.S. Office of Education was listing eight major classifications of information to be collected and placed in the student record.

More recently, the Ohio Department of

Education took a hard look at state laws requiring the keeping of such records and sounded a note of warning: "When construed with other statutes which give school authorities wide discretionary power . . . it [is] obvious that schools may collect any kind of information they desire concerning pupils." Power of that magnitude, admonished guidelines for Ohio administrators, must be handled with great care and discretion.

The ultimate mushrooming of records may have been reached in the massive New York City school system—largest in the nation. There, the records required or recommended for each child involve, if nothing else, a staggering amount of book work. A typical, rainbow-hued student dossier in New York carries:

A buff-colored, cumulative, four-page record card that notes personal and social behavior, along with scholastic achievement, and is kept on file for 50 years;

A blue or green test-data card on which all standardized test results and grade equivalents are kept, also for 50 years;

A white, four-page, chronological reading record;

A pupil's office card;

An emergency home-contact card;

A salmon-colored health record—one side for teachers, the other for the school nurse and doctor;

A dental-check card;

An audiometer screening-test report;

An articulation card, including teachers' recommendations for tracking in junior high school;

A teachers' anecdotal file on student behavior;

An office guidance record, comprised of counselors' evaluations of aptitude, behavior and personality characteristics;

A Bureau of Child Guidance file that is regarded, though not always treated, as confidential, and includes reports to and from psychologists, psychiatrists, social workers, various public and private agencies, the courts and the police;

And all disciplinary referral cards.

In New York and elsewhere, as the records began to contain more detailed and varied information, they took on lives of their own; they became, somehow, more trustworthy and permanent than the quixotic people they represented. Read the cumulative folder of a student—131 IQ, strong language skills, musical talent, loss of vision in one eye, permissive home—and then meet the child. If he doesn't come on bright, articulate, humming a little and self-assured in spite of a squint, something, one feels, must be wrong. And it's not likely the record will be blamed.

As the process of information collection in the schools snowballed—a few more forms for the guidance department, a few more facts for state agencies, another set of teacher comments for a new tracking plan—almost no one stopped to weigh the implications of recording; so much hard and soft data about children and their families. There was little thought given to development of clean policies and practices by which student and parental rights of privacy might be balanced against the needs of the school and other social agencies to know, or to guarantee, that material contained in records was accurate and pertinent.

Thus, by 1970, almost any government agent could walk into a school, flash a badge and send a clerk scurrying to produce a file containing the psychiatric and medical records of a former student. It was unlikely that the student would even know about the intrusion into his private life. A mother could be coolly informed that she had *no right* to see the records that resulted in her being transferred to a class for the mentally retarded. A father attending a routine parent-teacher conference about his outgoing son could discover in the boy's anecdotal record comments that he was "strangely introspective" in the third grade, "unnaturally interested in girls" in the fifth, and had developed "peculiar political ideas" by the time he was 12—judgments that the father could neither retroactively challenge nor explain.

Case histories such as these helped motivate sociologists David A. Goslin and Nancy Bordier of the Russell Sage Foundation to undertake a survey of the record-keeping practices of 54 representative school districts. They found that the systems maintained as part of their permanent files widely varied information on students. Almost all kept informal teacher-made ancedotal records, special health data, notes on interviews with parents and students, correspondence from home, records of referrals, delinquency reports and other "high security" data. Nearly three fourths of them also kept personality ratings, samples of student work, dairies and autobiographies. One third recorded the race and religion of students, almost a half recorded students by nationality, and half kept photographs on the record forms. The research team also discovered from the school psychologist to a front-office clerk might be responsible for feeding information into the permanent file. (One interesting sidelight: The records were consistently little used by teachers and school staff, a finding that flew in the face of the official rationale that the dossiers were needed to guide teachers in their relations with individual students.)

Goslin and Bordier also found that CIA and FBI agents had access to the entire student files in more than half the school systems, as did juvenile courts and health-department officials. Local police had access to complete files in almost one third of the systems. But parents—those citizens with primary legal and moral responsibility for the child—had access to the entire files in fewer than 10 percent of the systems. Some superintendents reported that parents were denied access to their children's records even when they possessed the legal right to inspect them. "What is particularly significant," the researchers noted, "is the impression that school officials have strong reservations about giving parents very much information (other than routine grade reports and sometimes achievement-test scores) about the content of evaluations that are continually being made of their children."

As a follow-up to the Goslin-Bordier study, the Russell Sage Foundation convened in 1969 a group of prominent educators, lawyers and social scientists to consider the ethical and legal aspects of school record keeping and to develop guidelines for the collection, maintenance and dissemination of these records. The conference report began: "There are clear indications . . . that current practices of schools and school personnel relating to the collection, maintenance, use and dissemination of information about pupils threaten a desirable balance between the individual's right to privacy and the school's stated need to know." It pointed to these abuses:

"Information about both pupils and their parents is often collected by schools without the informed consent of either children or their parents. Where consent is obtained for the collection of information for one purpose, the same information is often used subsequently for other purposes.

"Pupils and parents typically have little or, at best, incomplete knowledge of what information about them is contained in school records and what use is made of this information by the school.

"Parental and pupil access to school records typically is limited by schools to the pupil's attendance and achievement record (including standardized achievement-test scores).

"The secrecy with which school records usually are maintained makes difficult any systematic assessments of the accuracy of information contained therein. Formal procedures permitting parental or pupil challenges of allegedly erroneous information do not exist. An unverified allegation of misconduct may therefore . . . become part of a pupil's permanent record.

"Procedures governing the periodic destruction of outdated or no longer useful information do not exist in most systems.

"Within many school systems, few provisions are made to protect school records from examination by unauthorized school personnel.

"Access to pupil records by non-school personnel and representatives of outside agencies, is for the most part, handled on an ad hoc basis. Formal policies governing access by law-enforcement officials, the courts, potential employers, colleges, researchers and others do not exist in most school systems.

"Sensitive and intimate information collected in the course of teacher-pupil or counselor-pupil contacts is not protected from subpoena by formal authority in most states."

The report concluded that "these deficiencies in record-keeping policies . . . constitute a serious threat to individual privacy in the United States." It suggested guidelines for record keeping based on these principles: (1) No information should be collected about students without the informed consent of parents and, in some cases, the child. (2) Information should be classified so that only the basic minimum of data appears on the permanent record card, while the rest is periodically reviewed and, if appropriate, destroyed. (3) Schools should establish procedures to verify the accuracy of all data maintained in their pupil records. (4) Parents should have full access to their child's records, including the right to challenge the accuracy of the information found therein. (5) No agency or persons other than school personnel who deal directly with the child concerned should have access to pupil data without parental or pupil permission (except in the case of subpoena).

In 1972, the Sage Foundation tackled the subject once more and found that, in spite of the distribution of 100,000 copies of its guidelines, "the vast majority of schools in this country still do not have records policies which adequately protect the privacy of students and their parents."

The researchers also noted that a good policy may not begin to solve record problems. In one school system visited by a researcher, a written policy was drawn up by a committee composed entirely of counselors. As a result, "the social worker thought it did not apply to her records, the mechanics teacher who had considerable informal contact with local employers thought that it only applied to formal requests for information handled by the registrar, and one of the principals regarded it as of the utmost importance to stay on good terms with local employers by telling them in detail of all the behavior problems potential employees had experienced while in school."

The Sage reports and guidelines helped fuel a growing national alarm about threats to privacy posed by our technological and bureaucratic society, and several educational groups subsequently took public positions insisting on the confidentiality of records. In 1971, the NEA, which 46 years before had urged more comprehensive record keeping, approved the code of Student Rights and Responsibilities, which asserts that the "Interest of the student must supersede all other purposes to which records might be put," and urges strict policies to protect the rights to privacy of students and parents. It suggested that junior high school students have joint control with their parents over their own records, and high school students, total control.

Recently, a few local school boards, notably those in Des Moines, Iowa, and Jefferson City, Missouri, have adopted regulations to safeguard records. Des Moines allows parents and students to see the records, asks written consent of them before any information is released to anyone else, and gives them the power to determine which records may never be released to anyone.

On the state level, Oregon has given parents the right to inspect the total record, Delaware grants students 14 years or older control over the release of information from their own records, and New Mexico guarantees any public school student the right to inspect his own record. Both New Mexico and Oregon have moved to keep records confidential from outsiders. Oregon law prohibits the release of records to anyone other than the parents and child. The New Mexico board of education policy statement says that "government investigative agencies as such have no inherent legal right to have access to student files and records," and the board bars them from access without the student's permission or a court order. New Hampshire prohibits schools from keeping records that "reflect the political activities or beliefs of students."

Some educators and parents, discouraged with waiting for legislators or school administrators to act, have sought to take the reins in their own hands. In San Francisco, a group of black teachers and counselors are working for the elimination of all records except for a small card of hard data. They argue that the image of a folder as some capacious pocket into which all sorts of alleged wrongdoings and bad marks can be dropped has a bad psychological effect on students, that the folders consistently contain indefensible and gratuitous negative comments but little about the student's real educational ability, and that these biased comments are used authoritatively by the schools, particularly by guidance counselors, who see a folder as a kind of bible. "Black students' folders tend to be at least half an inch thicker than those of white children," one of the committee members said, "which tells you something about the child even before you open the folder."

The manner in which the thick folders of a group of junior high school students in Washington, D.C., were handled is now the basis of *Doe* v. *MacMillan*, a case before the U.S. Supreme Court. The suit was triggered when the House Committee for the District of Columbia, in preparation for its annual hearings on the D.C. schools, sent investigators out to gather up the cumulative records of students. Copies of actual test papers, disciplinary reports and evaluations—defamatory if not libelous materials—were reproduced with the students' names, still on them. The report was then published by the committee's chairman, entered in the Congressional Record and circulated about the country. Parents sued the individual congressman as well as the school board, principal and teachers. Sovereign immunity protections in the District of Columbia complicated the case, but the U.S. Supreme Court recently ruled that the congressmen had no special immunity "from local laws protecting the good name or the reputation of the ordinary citizen" and remanded the case to the Court of Appeals for further action. Not coincidentally, the D.C. board of education established regulations for protection of records just as the complaint was filed.

But even the best-intentioned policies don't guarantee ethical practices. A fair record policy in a suburban school district near Cleveland fell into disrepute when it was learned that students were regularly given the job of transporting records from one building to another and were just as regularly snooping on each other.

A California law passed in 1959 assures parents of the right to inspect their children's cumulative records, but local school officials frequently refuse access or fail to inform them of the privilege.

California's state education code also forbids school employees from giving out personal information about pupils to anyone except specified officials. That didn't stop one district administration, acting in advance of a school board hearing into the suspension of a student, from publicly announcing that the boy had been guilty of "serious violation of manners, morals and discipline." Three years later, the courts found that the public statement was based on nothing more than allegations of the school superintendent, and the student was awarded damages.

So while scattered improvements in the national picture have indeed occurred, school records continue to provide an easy route for invasion of privacy. Perhaps the worst abuses of school record keeping in America occur, despite well-established guidelines to the contrary, in the country's biggest and reputedly most liberal city, New York.

During the months that the author served on the New York City board of education's committee to revise student records (as chairman of the subcommittee on safeguarding and dissemination), these incidents occurred:

A secretary at a private tutoring agency calls a public junior high school to inquire about a child's reading level. The principal opens the child's record and gratuitously informs the unseen caller that the child has a history of bedwetting, his mother is an alcoholic, and a different man sleeps at the home every night. When the disclosures are reported to the board of education, the principal denies the incident and his immediate superiors back him up.

A teacher of a child entering a new school gets this summary of the student's past academic year: "A real sickie—absent, truant, stubborn and very dull. Is verbal only about outside, irrelevant facts. Can barely read (which was huge accomplishment to get this far). Have fun."

A black father who works for the school system has a friendly teacher show him his bright daughter's "confidential" record. In it is a five-page critique of how his own community activities as a "black militant" are causing his daughter to be "too challenging" in class.

Yet New York State has the clearest regulations in the nation concerning student records, thanks to a series of administrative and legal decisions dating back to 1960. In that year, the Levittown board of education directed that parents be permitted access to all the school records of their children, including evaluations, guidance notes and medical, psychiatric and psychological reports. A dissenting board member appealed the decision to the New York State commissioner of education. The result was a landmark ruling, *Matter of Thibadeau*, which specified that as a matter of law, parents have access to all their children's school records.

Yet in the following year, the administration in a neighboring New York school district refused to allow either the father or the private physician treating the former's son to see the boy's records. The father went to court, and the decision, *Van Allen* v. *McCleary*, stated: "It needs no further citation of authority to recognize the obvious 'interest' which a parent has in the school records of his child." The court added that the parent's right to see the records stems from "his relationship with the school authorities as a parent who under compulsory education has delegated to them the educational authority over his child." Since both the Thibadeau and Van Allen rulings affected all New York State school systems, they became the basis for the detailed *Manual on Pupil Records* distributed to all school personnel.

Handed that clear mandate to allow parents access to records, how did the New York City school system respond? In May 1962, the board of education sent a special circular to all schools stating that most data in records—guidance notes, medical and psychological reports, social agency reports—"are not part of the official school record and are, therefore, not to be made available for parents to inspect." The system restated that policy in 1964 and 1969, insisting it was "in conformity with State regulations."

In 1970, the New York City system, disturbed by the publicity surrounding the Russell Sage guidelines and fearful of lawsuits, took a small step forward for privacy. It appointed an impressive committee of school department and civic representatives to review and help shape its policies.

An incident during the policy revision process said a good deal about the power of bureaucrats to ignore or override policy. The committee, hearing that school employees were regularly providing sensitive information about students to outside agencies, urged the chancellor to order an end to the practice until a new policy was settled on. He did so. Fifteen days later, under pressure from school administrators, he rescinded the order. During that short period of time, 28 separate and distinct categories of outsiders had called the board of education to complain that their usual sources of information about students had been cut off. They included FBI agents, military intelligence officers, welfare workers, policemen, probation officers, Selective Service board representatives, district attorneys, health department workers and civil service commission officers.

Inside education's own house, the most vocal opponents to giving parents access to student records are those who write and maintain the most sensitive and inferential records; the guidance counselors. In 1961, the American Personnel and Guidance Association issued a policy statement on the use of records that asserted that counselors have the right to decide which records parents should see and how those records should be interpreted to parents. The counselors generally argue this way: What if the child reveals a conflict with his parents that would only be aggravated if the parents knew what the child had said? What if a child tells of a home situation that may be defamatory or even illegal but is important to record for the future counseling of the student? What if parents misinterpret the professional notations of counselors? What if the child needs someone outside his home to confide in?

The other side of that argument is that if information is so delicate or painful that parents shouldn't see it, it probably shouldn't see it, it probably shouldn't be in a school folder at all. Counselors answer that student evaluations will be badly watered down if those writing them know parents will see them—a statement that raises provocative questions about the school's views of the parents of their students, and its honesty in dealing with them.

Dealing with this issue, the *Buffalo Law Review* pointed out in 1970 that when a school evaluates a child, it is acting *in loco parentis*, because evaluation is a parental function that has been extended to the school. But "once the school authority insists on keeping its evaluation of a child secret, then it intrudes into the domain of parental prerogative and oversteps its legitimate *in loco parentis* authority, for it is obvious that a parent can control publication of his evaluation of his own child and can keep secret from the world at large such evaluation."

There are, of course, circumstances in which the best interests of a child and inspection of his records by his parents may conflict. However, definition of those circumstances is made difficult by an unresolved ambivalence about whom counselors and school psychologists serve. If the counselor's client is the student, then the counselor

should guard the pupil's records and interests zealously against all other parties, including other school employees. But if his client is the school system that pays him, and his job is trying to help adjust that student to the existing educational environment, then the counselor or psychologist might feel free to share personal information about the student with other educators and government agencies but not with parents, who become a sort of third party. Counselors who are used by school systems primarily to discipline truants and misbehavers unavoidably feel that the institution, not the child, is the client. Administrators all too often evaluate counselors not on the well-being of the child but on the thickness and currency of his record folder.

Perhaps the biggest problem faced by all concerned is the fact that we live today in a world of technologically recorded, maintained and communicated information. In 1968, the Phoenix, Arizona, Union High School System introduced a cumulative record system that enabled any staff member to pick up any phone in his school, push a button, dial a code number, dictate comments about a student into a remote recorder and play back comments made by other staff members. The comments, recorded on magnetic tape or a plastic disc in a central records room, are then transcribed by a typist onto pressure-sensitive labels that are entered in the student's permanent file. A clerk sorts the transcriptions, and they are delivered to the appropriate guidance counselor for inclusion on the cumulative record. Color coding identifies the kind of information contained on each gummed label—health, attendance, discipline or financial. Efficient, unquestionably. But what happens if a teacher calls in a comment at the end of a bad day and two weeks later regrets it, but the information has already made its way to the storage system? What if the typist misunderstands the dictation? What if the staffer dials a wrong number? The potential for abuse is staggering.

The state of Florida already has a centralized record-keeping computer system, which employs an IBM 1230 Optical Scanner to enter data for all pupils from the ninth grade on up into a computer. These items appear: Social Security number, grade, school, address, type of curriculum, date and place of birth, citizenship, health and physical disabilities, sex, race, religion, marital status, family background, languages spoken at home, academic record, test record, honors work record and extracurricular activities. Iowa and Hawaii are installing similar systems.

Just last April the New York State Education Department asked 85 school districts to supply the names and addresses of all students who have received psychological or social work services; have a history of truancy, delinquency, drug abuse or alcoholism, or a "potentially disabling emotional, physical or mental handicap"; or have attended classes for unwed mothers, for the "socially maladjusted," or in drug-abuse prevention. In no cases were parents asked for permission to release the information.

Many systems complied, in one that didn't. Commack, New York, the director of pupil personnel services said his district would not send the names along "until I receive a statement . . . that they will not be put in a computer . . ." The Nassau (County) Psychological Association took a strong stand against the information release, telling all schools: "Releasing this information without securing authorization from the parent or guardian is inimical to the professional behavior of the psychologist."

Even the federal government, not the greatest defender of privacy rights in recent times, has begun to show some concern about the possible adverse effects of computerizing personal records. An HEW task force on data banks, concrened at first primarily with the recent push to require Social Security numbers of all children entering schools, has broadened its inquiry to include a wide range of other record problems. Another HEW group has been studying how records contribute to the systematic classifying and inappropriate labeling of schoolchildren.

What is often described as California's "pioneering" work in social control suggests ways in which schools inadvertently may feed information about their students into Big Brother computers. With funds from Title I of the Omnibus Crime Control and Safe Streets Act of 1968, the California Council on Criminal Justice has set forth on the mission of making "Californians safe from crime." CCCJ funds a statewide program called "Correctionetics." If computerizers and centralizes all juvenile records, including information on psychiatric treatment. Under state law, children down to the age of six years who have been identified as being "in danger of becoming delinquent" can be declared "pre-delinquent" and thus become a California Youth Authority statistic with a juvenile record.

As if that weren't enough, CCCJ is looking for other potential problems that might be computerized. One program, funded for two years, instructed kindergarten teachers in sophisticated methods of identifying "target students"—those five-year-olds whose social and academic profiles were similar to those of adolescents who ended up in juvenile courts.

Suddenly, an unwary kindergarten teacher has become in effect a government intelligence agent.

NSA President Strongly Supports Buckley Amendment

National Student Association President Kathy Kelly spoke out strongly today in endorsement of the Family Educational Rights and Privacy Act of 1974 sponsored by Sen. James Buckley (Conservative, New York). President Kelly, former student body president at the University of Minnesota at Minneapolis, took exception of certain technical problems with the language of the bill which should be clarified with additional amendments to be introduced when Congress reconvenes.

But she noted that the bill provides a long overdue mechanism for correcting misinformation and errors in students' records which may be vital to their careers and President Kelly hopes that efforts on the part of some educational organizations to delay implementation of the bill will be defeated in light of the pressing need for the legislation.

President Kelly said that the National Student Association, the oldest and largest organization of student governments in the country, has long been an advocate of the legal rights of students, and the Association feels strongly that this bill will curb the arbitrary power that has so often been misused by school administrators and agencies allowed easy access to students' records. Such access, denied parents or the students themselves, has negatively affected students' careers both in school and long after their tenure in the academic community.

The bill would provide parents or students access to records and an opportunity to challenge inaccurate or misleading information therein. Permission of the parents or students must be obtained before records can be released to persons or agencies outside of the school. Also, parents and students must be notified of their rights to inspect records.

The Association hails this bill as a long overdue injustice redressed, and commends Senator Buckley for drafting it.

[From the Harvard Law Record, Nov. 8, 1974]

Backbencher: Harvard Favors Secrecy, Against Candor

(By Ira Nerken)

Faced with the release of the Pentagon Papers, Dean Rusk threatened an end to the placement of important information (vital to an informed public) on paper. Faced with demands for the White House tapes, Richard Nixon threatened an end to "candor and frankness" (constituting an abuse of trust) in the oval office. Faced with Senator Buckley's bill giving students access to their own educational records, Harvard has threatened both an end to placement of information vital to students in their records, and an end to frankness and candor in their files.

With the emergence of the issue of student access to files that most vitally affect them, the arrogance of power in academia—at Harvard particularly, but also at other institutions of higher learning—has been set out in bold relief.

Yet to listen to the University's Counsel, Daniel Steiner, one would think the issue is neither Harvard's resentment of any constraints on its autocratic exercise of power, nor even real problems with the substance of the Buckley amendment. Buckley's bill is "terribly drafted," and "extremely ambiguous," claims Steiner, and the "heart of the University's objection," is "the lack of opportunity to be heard." For this Steiner merits a special citation for disingenuousness. For while these issues may have some validity, they have little to do with Harvard's real objective, which is to kill the Buckley bill.

Last summer State Representative Lois Pines introduced a bill in the Massachusetts legislature similar in substance to the Buckley amendment. Pines had drafted her bill well. It was not ambiguous. Steiner was given not only the opportunity to be heard, but to suggest alternative proposals. In that situation he argued that "unless the legislature knows of specific violations, legislation shouldn't be enacted." As to drafting proposals, he doubted anything could be drafted that "would serve her [Pines'] purposes and ours."

"Harvard administrators," according to the *Crimson*, "have said repeatedly since the [Buckley amendment] passed Congress that it will hurt students because they will no longer be able to get straightforward and honest letters of recommendation. (Thus we learn the new Harvard motto: "Veritas—but not to your face.") This is not only a sordid, but also a hoary argument, and one well answered by President Prestice of Wheaton College, responding to a similar argument: "How can an evaluation be considered 'honest and candid' if it is to be kept from the person evaluated? I agree that my criticism of my students should be a matter between him and me and people who have a responsible right to my views. They should not be available to the general public, but they must be available to the candidate himself if I am to be considered 'honest and candid.'"

Admittedly, the protection Harvard heretofore afforded the hatchet job is gone—unless the hatcheteer wants to phone the University. But it took a Harvard senior tutor to point out what Harvard administrators and faculty chose to ignore: "those professors who occasionally say they'll write and then don't write a glowing letter will now say nothing, as they should have done all along."

As to the other hobgoblins Harvard has manufactured. *The Buckley amendment would allow students to violate the confidentiality of their parents' financial statements.* If parents are concerned about this, and can't get a promise from their sons/daughters not to peek, that is their prob-

lem—not Harvard's. *Students could see psychiatric reports.* Why in blazes are psychiatric reports lying around in files anyway? And if they must be there, why shouldn't the students look? *Harvard can no longer protect students from being forced to supply potential employers with materials from their files.* Maybe we need a law to protect Harvard students from overbearing employers.

Professor Alan Heimert, of the Harvard English Department, denounced the Buckley bill as "representing the traducing of an entire profession. This law says that academics don't have any ethics, that academics don't even have any common sense, and that any negative recommendation is written in bronze." Perhaps Heimert should compare his words to those of the policemen who claim procedural restraints on their powers to search, etc. are a "traducement of the entire profession." Perhaps he should wonder why courts are allowing defendants to see their presentence reports, without worrying that this implies the judicial system has no ethics or common sense.

Finally, a word of advice to Harvard. Dean Rosovsky (FAS) has talked of "having no choice but to honor the law." But the Secretary of the FAS Council said that while the faculty's "initial posture" would be "full compliance" with the law, "non-compliance isn't out, but it isn't in." James Q. Wilson said "no one is talking about noncompliance at this stage." Such talk may get Gerald Ford to issue a statement deploring non-compliance, but saying Congress was wrong. But it will be hard to kick Southie around anymore.

QUESTIONS ABOUT AND OBJECTIONS TO THE BUCKLEY AMENDMENT—THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 (SEC. 513 OF P.L. 93-380)—AND RESPONSES

Numerous higher education groups are voicing complaints about and objections to the Buckley amendment. Our office receives calls and letters about it every day. It is natural that they should complain; they are being required to change long established practices and (bad) habits, and change is often painful, or, at least, uncomfortable. Most of their objections are not substantive, however, or can be resolved by reasonable regulations. But there is one largely reasonable concern, which will be addressed later.

While there is an effort underway to lobby for delay in the implementation of the amendment, most schools and agencies seem to be able and are in fact preparing to comply with implementation on November 20, 1974. We have received calls from schools, school districts, school boards, colleges, and universities from all across the country; nearly all the callers have said that their schools are developing a policy and procedures for compliance, but that they have a question or two as to what a particular aspect of the bill means or includes, or whether such and such procedure on their part would be appropriate. In fact, we have even received regulations prepared by local school districts, which are now in force, to implement the law.

As further evidence that schools across the country are willing and able to comply, let me offer a quotation from the "Education Daily" of September 27, 1974:

"In advisories to their members to explain what will be expected of them under the new privacy requirements of the Education Amendments of 1974 (P.L. 93-380—Ed Aug. 16), both the National Association of elementary School Principals and the American Association of School Administrators are suggesting that schools review their policies on record-keeping and develop standards as to what should be in cumulative student folders in the first place.

"It would be a good idea, says Dr. Paul Salmon, Executive Director of AASA, for schools to remove from the folders and destroy such things as unsubstantiated teacher opinions or language which tends to "categorize" students. While many schools already have rules requiring student records to contain only responsible and documented information, Salmon points out, others have tended to "drop everything that came along" into the cumulative folder. For such schools, Salmon and NAESP's William Pharis say, the best advice is to get their records into order before the law goes into effect November 20."

It is also worth noting that more than 20 states already have state laws or regulations on the books essentially similar to the Buckley amendment. In Virginia, for example, even grade schoolers are now permitted access to their school records!

All this is not to suggest that there are no problems and uncertainties involved in the implementation of the Buckley amendment. But it must be realized that such problems and questions arise before, during, and after the implementation of nearly every law. That is one of the reasons we have courts, where considerations of the intent of legislation, the test of reasonableness and of equity usually combine to produce proper and appropriate applications of the law. We also have administrative procedures, particularly in this case, for clarifying and adjudicating issues which may arise.

However, most, if not all, of the questions that are being raised about the amendment, can be resolved without need of recourse of the courts. The law is still new and it has not been fully explicated. Regulations to be issued by HEW should clear up many of these questions. The meeting held in early October between members of the staff of the Congressional Education committees and representatives of HEW to discuss regulations regarding the implementation of the Buckley amendment helped clear up some of the apparent problems. The meeting that OE recently had with interested educational parties highlighted various problems. Now the HEW Task Forces are proceeding to draft appropriate regulations. Secretary Weinberger has announced that regulations will be published before the end of the year. With reasonableness and cooperation on all sides, much can be acceptably resolved without need of further legislation.

QUESTIONS AND OBJECTIONS

1a. Prior Confidentiality—what about the amendments applicability to already existing letters, statements, and evaluations which were written with the understanding that they would remain confidential—i.e., not for the eyes of the student in question? Would not access to these items involve a violation of the rights of privacy of their authors.

1b. Confidential recommendations on the part of teachers, counselors, etc, are important aides to evaluating students, especially for college and graduate school admissions offices. If these statements were to be available to the students in question, their authors would be very unlikely to be candid and frank in their assessments of a student's strengths ,and especially his weaknesses. This would make the selection process much difficult and tend to penalize the talented student who is not a good test-taker.

1. Response—These objections are the most significant and substantive of those that have been raised. While it was not the intent of the Buckley amendment to override prior, acknowledged confidentiality, nor to preclude any confidential assessments and recommendations in the future, the language of the amendment seems to eliminate such confidentiality.

In the great majority of cases, these confidential statements are at the request of the student himself with the understanding that he would not have access to them, although many teachers do provide copies of such statements to their students. Such an understanding on the part of the student and the teacher, while often implied, is nonetheless an agreement which in effect gives the confidentiality of these statements special standing.

On the other hand, there are some evaluations and comments of which the student is totally unaware, sometimes written by individuals with an inadequate knowledge of the student or with a personal bias against him. Such evaluations sometimes find their way into a student's official file, where they may do inestimable damage to his future. In other situations official Committees prepare and send evaluations of a student to other schools to which the student is applying. The student generally has no idea of the content of the evaluations and no opportunity to submit his own statement. Cases sometimes arise, therefore, where a student is "judged" and found "guilty" or wanting by a school or an employer without any opportunity to know who his "accusors" are or what has been said against him.

One fact that should be realized if we are to keep these matters in current perspective, is that a number of parents and students have already fought successfully in court to have school records, including confidential evaluations relating to college admissions, opened to them for good cause. The rippling effect of these court decisions may eventually make much of this discussions academic.

One way to deal with the confidentiality question might be found by having the teachers and schools seek a written waiver of access from students in connection with certain recommendations and evaluations (as is already being done in some places). On the other hand, students should seek a guarantee of access to such recommendations and evaluations whenever they can (this is also already being done in some places).

Because the Buckley amendment is silent on this subject, the seemingly all inclusive nature of its language would seem to override privileged confidentiality. Realizing that the rights of teachers and counselors and the evaluation requirements of colleges need to be considered as well, we would hope that equitable provisions for this situation could be worked out by regulations. Failing that, instead of seeking to delay the implementation of the law, we would suggest that it be amended in the following general manner:

Provided, however, that such personally signed statements or letters to which the student (or his parents) has previously waived in writing his right of access, or which are dated prior to and are generally acknowledged to have been written in confidence, shall not be available to the student or his parents, except upon permission of the author or the order of a court of competent jurisdiction.

Such an addition would perhaps deal adequately with the prior confidentiality question. It would also permit a waiver of access by the students, so that colleges and universities would be able to receive more "candid" evaluations, instead of the bland, useless ones which they fear the Buckley amendment could produce. (On this point let me note that Dr. Joseph Ruth, Director of Admissions for George Washington University, has commented that recent court decisions providing students and parents with access to school application files have already produced increasingly bland and less useful letters of recommendation—prior to and independent of the Buckley amendment).

Some colleges might contend giving the student the option to seek confidential or non-confidential recommendations will still render them useless. But surely this ought to be the right of the student and the

teacher to decide. Let it also be remembered that the student is generally hoping to gain something by obtaining a recommendation. A bland, useless recommendations will not be helpful to him. It should generally be to his advantage to take the calculated risk or gamble—his trade-off—of a confidential recommendation which could prove helpful to his ends.

There is no reason, under this procedure, for a teacher to be unwilling to write a thoughtful, positive recommendation on a student whose average grades may mask a superior potential and imagination. And surely the average admissions officer can distinguish between a bland letter which says essentially nothing and an enthusiastic or detailed letter which has something of value to say. Even in terms of negative comments, are we wrong assuming that most teachers would have the moral courage of their convictions to say what they believe, even in the face of disclosure to the individual in question? Or is it that they have often been too loose with their comments, too generous with their personal prejudices and too sparing in their objectivity?

The comments sent to us by the Chairman of a department at a major university are perhaps instructive here:

"It may be that a recommendation 'is not likely to be candid if the writer knows it can be read by the subject', but it certainly will not be an unfair one. Those of us who make recommendations which may affect the lives of others certainly should have the courage and decency to be willing to have our judgements questioned. If I am unwilling to allow a person to see what I say about him then it is probably true that I should not say the thing at all."

* * * * *

2. How broad is the term "any and all official records, files, and data" to which students must be given access? Does it cover psychiatric files, counselors files, all records of every officer whether at home or in the office? Does it cover the notes of a dean or a professor after he has talked with a student?

2. Response. This is the second most important objection to the Buckley amendment, but I feel that most concerns here can be favorably resolved with careful clarification of the amendment language.

The key language of the amendment on this point is underlined in the following quote:

"Any and all official records, files, and data directly related to their children including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system."

The amendment is addressing official records or files or data which are intended for school use or to be available to parties outside the school or school system. The language is not intended to apply to the personal files of psychologists, counselors, or professors if these files are entirely private and not available to other individuals. Records "intended for school use" should generally include those established by an office or a division of the school for the use of that office or division. The definition of the words "official" and "intended for school use" are of major importance. It appears that the definitions and regulations being developed at OE will employ a judicious interpretation of these words, one which is not necessarily all-inclusive, and which will give consideration to the use to which the files are put. In general, it is to be hoped that the law shall be interpreted and implemented—and obeyed—with an attitude of reasonableness. The listing of specific items in the law which follows the quoted part above is intended to prevent the establishment of a separate, "Unofficial" file by the school, as has happened in some areas where state or local laws provide for access by parents and/or students.

3. How will the law affect career placement files, "academic credentials" files, which contain confidential recommendations?

3. Response: Again, these files are set up solely at the request of the student, with his understanding that he will not have access to such confidential recommendations as are contained therein. If we can establish in the law that such an understanding, i.e., waiver of access, is a legitimate exception to the general requirement of the law, then there should be no problem here.

On the other hand, since these files will have a significant effect on a student's academic and/or job prospects, it seems not only reasonable, but also very important to the student's interests, that he have some idea of what is being distributed to prospective employers, etc., about his abilities and character. In such a situation should a student be required to rely solely on the judgment of a placement office as to what unknown (to him) comments and information are to be sent out about him? It seems only fair to at least give a student a listing of the items about him that are being distributed to prospective employers, etc.

4. Inventive teachers and officials will find ways to circumvent the law.

4. Response. Very likely in some areas. This is true of virtually every law. However, the major purposes of the law will be largely achieved: Parents and students will have access to their school records; inaccurate, misleading information will be able to be removed from records; the general availability of confidential information on students to parties outside the schools will be strongly curtailed.

5. The law contains important ambiguities that should be cured by legislative action. There is little or no evidence of Congressional intent to provide guidance.

5. Response. There do exist some apparent ambiguities, but most of the law is quite explicit. The law has yet to be fully explained. This takes time for every law, and even a committee Report is usually not adequate. There is great evidence of Congressional intent to provide guidance, to wit: the meeting between the Congressional Education committees and HEW on the regulations and implementation of the Buckley amendment; the required submission of proposed regulations pursuant to P.L. 93-380 to the Congressional Education Committees for their review and approval.

6. Will the amendment permit students to have access to their parents' Confidential Statements, etc.?

6. Response. It should not. The language specifies "records, files and data *directly related* to their children" (the student). While the Buckley office attempted but failed, only because of confusion and inadequate time, to get the Conference on H.R. 69 to specifically exempt Parents Confidential Statements, such Statements and related information can be reasonably interpreted as not being *directly related* to the student, in the sense that the data is on other individuals. It should, therefore, remain confidential.

7. Under the law, a college will not be able to give any information about a student to his parents without his consent.

7. Response. False. This is surely an overly narrow reading of the law. Nothing in the law is intended to prevent a school official from informing a student's next of kin that he is on the verge of suicide, has had an accident, has been arrested, or even that he is doing very poorly in school and might benefit from some thoughtful communication or assistance from his parents.

8. The Act requires institutions to provide hearings for students to challenge any record they consider inaccurate or misleading. Does this mean that hearings must be held if a student thinks his essay deserved an A and it is "inaccurate and misleading" for his records to show a B? Or if a professor's evaluation, filed with the student's department, says that the student showed little creativity in his written work, must the institution offer a hearing on the issue or the student's creativity? In short, what is the scope of the right to a hearing?

8. Response. This is another red herring. The question of a grade is a matter to be taken up with the teacher involved, and perhaps the department chairman. The items at issue in nine out of ten cases will be erroneous information (as a grade incorrectly recorded), anecdotal comments or evaluations by teachers, or personal information on the student or parents which probably has no business being in such a file. There is no pressing need, nor is it always desirable for a law to fill in every job and title of procedures and the like. There needs to be some legitimate leeway for administrative discretion and flexibility. Besides, no law could every enumerate and pre-judge every possible situation that might arise under it. Regulations are expected to outline basic minimums in regard to hearing procedures.

9. Despite its evident purpose of protecting students' privacy, the Act is likely to cause invasions of that privacy. Credit bureaus, prospective employers, governmental agencies conducting security clearances and other organizations can now require students to obtain all their records (psychiatric, financial, disciplinary, evaluations, etc.) and turn them over. Prior to the enactment of the Act, institutions could protect students by refusing to turn over such records even if a student had given consent.

9. Response. This is something of an insult to the intelligence, independence, and backbone of today's student. Besides, who can really assert that a college student is better off at the mercy of any given school's policy on records dissemination, rather than his own judgment and decision? Actually, this is a somewhat superfluous issue because the law only requires that a parent or student have "the right to inspect and review" the records, not have a copy of all of them. The only records that he must be able to obtain a copy of are those which the school intends to give to an outside party!

10. Response. It is true that there were no hearings on this law. However, more than twenty states have enacted similar legislation, and the law was closely patterned on the carefully considered recommendations of respected experts and experienced professionals in such fields as law, education, medicine, counseling, school administration, and various academic disciplines (in particular see the *Guidelines* of the Russell Sage Foundation).

Legislation in the form of amendments frequently becomes law, and reported bills frequently have had no or inadequate hearings. In this case, the proposal had been circulated to the Senate and several educational organizations more than two weeks before it was passed. There was also ample time during the Conference for interested parties to suggest changes. In any event, the Congress saw fit to enact this legislation into law.

11. Does the Act give any rights to a person who has graduated and is no longer enrolled as a student? Or does a person who has applied to a college but was not admitted have any right of access to the college's records?

11. Response. By an oversight former students were not specifically dealt with in the amendment, although it can be argued that a certain reading of the language would include former students. A court might extend this right to them as an important civil right of privacy, which falls "within the penumbra of the Constitution."

The case of a person who applied but was

not admitted to a college was not addressed by the amendment. However, again, a certain reading of the language would include application files. Thus, these questions remain to be resolved. It is worth noting here, though, that at least one court decision has upheld access to such files.

12. Should all college students be treated the same vis a vis the rights established by this law?

12. Response. While emotional maturity is something that many people never achieve, the rights of adult citizenships are by and large conferred upon Americans at age 18 (voting, etc.). The House-Senate conferees felt it fitting and proper to extend the rights established by the Buckley amendment to any student who is attending a post-secondary educational institution, and no compelling body of evidence or argument has yet been put forth to successfully contest that judgment.

13. While this law may be appropriate for elementary and secondary schools, colleges and universities are different and the law should not apply likewise to them.

13. Response. This argument is an extreme case of in loco parentis. How is it that these basic rights, which will very likely be established throughout the Federal Government by the end of the 93rd Congress (see S. 3418) are all right for an 18 year old high school senior, but not for a 21 year old (or an 18 year old) college student?

14. Is a right of private action created to enforce the Act or is the HEW compliance mechanism created by the Act the only means of enforcement?

14. A right of private action was intended in the Buckley amendment by reference to another part of the Senate bill. However, the Conference did not accept the complete language of the referred-to Senate provision, and the explicit right of private action is no longer in the law at this time. However, it may be interesting to note that the national PTA and the League of Women Voters are considering establishing monitoring activities to review and seek compliance with this law.

15. The applicability of Section 438(b)(4)(A) of the Act is governed by its reference to subsections (c)(1), (c)(2) and (c)(3). There are no such subsections in the Act.

15. This is simply a technical printing error caused by changes made in the amendment in the Senate which necessitated relettering the paragraphs. The reference should be subsections (b)(1), (b)(2), and (b)(3). By the same token, the last section of the law should be labeled (h), not (b).

16. The effort of locating and correcting all the applicable school records will be a severe problem for educational institutions, particularly those in higher education.

16. Response. As stated in the beginning of this memorandum, of course the change of policies and habits occasioned by this law will cause discomfort and some administrative problems. So do most new laws. But that is certainly not a serious or credible reason to postpone implementation of the law or to argue that institutions of higher education should be exempt from the law. Indeed, the objection is in itself compelling evidence of the need for the Buckley amendment. Schools don't even know what files and information on their students are floating around where and being given to whom!

On some campuses there may be as many as fifteen to twenty separate files on a given student scattered around the campus. Some school officials have felt that the law would require them to gather all these files together and review them centrally. But this is not necessitated by the law. All that is basically required is that the student be informed, if he makes an inquiry or request, of the existence and the location of these files, and that he or she be given the opportunity to review the appropriate files within forty-five days of the request. Individual offices might be advised to begin a general review of their files to see whether there are things in them which cannot be adequately justified, or which they are afraid to let the student see. The question of whether or not officials could or should destroy items in the file, or send them back to their source, after a student has sought access to his files has not yet been fully resolved, although the law seems to permit it. There is a further question here as to whether this would be in the best interests of not only the students, but also the institutions involved. The anticipated speedy passage of an amendment exempting confidential letters and statements written in the past will resolve this question.

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

SEC. 513. (a) Part C of the General Education Provisions Act is further amended by adding at the end thereof the following new section:

"PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

"SEC. 438. (a)(1) No funds shall be made available under an applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy of denying, or which effectively prevents, the parents of students attending any school of such agency, or attending such institution of higher education, community college, school, preschool, or other educational institution, the right to inspect and review any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. Where such records or data include information on more than one student, the parents of any student shall be entitled to receive, or be informed of that part of such record or data as pertains to their child. Each recipient shall establish appropriate procedures for the granting of a request by parents for access to their child's school records within a reasonable period of time, but in no case more than forty-five days after the request has been made.

"(2) Parents shall have an opportunity for a hearing to challenge the content of their child's school records, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

"(b)(1) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy of permitting the release of personally identifiable records or files (or personal information contained therein) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

"(A) other school officials, including teachers within the educational institution or local educational agency who have legitimate educational interests;

"(B) officials of other schools or school systems in which the student intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

"(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 409 of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection; and

"(D) in connection with a student's application for, or receipt of, financial aid.

"(2) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1) unless—

"(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

"(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

"(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided,* That, except when collection of personally identifiable data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data has been collected.

"(4)(A) With respect to subsections (c)(1) and (c)(2) and (c)(3), all persons, agencies, or organizations desiring access to the records of a student shall be required to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system.

"(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

"(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized

by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

"(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education the permission or consent required of and the rights accorded to the parents of the students shall thereafter only be required of and accorded to the student.

"(e) No funds shall be made available under any applicable program unless the recipent of of such funds informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

"(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provsions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

"(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of ths section and complaints which may be filed concerning alleged violations of this section, according to the procedures contained in section 434 and 437 of this Act.".

(b)(1)(1) The provisions of this section shall become effective ninety days after the date of enactment of section 438 of the General Education Provisions Act.

(2)(1) This section may be cited as the "Family Educational Rights and Privacy Act of 1974".

CONFERENCE REPORT EXPLANATION OF ACTION ON BUCKLEY AMENDMENT TO H.R. 69

Protection of the rights and privacy of parents and pupils.—The House bill provides that the moral or legal rights of parents shall not be usurped. In addition, the House bill provides that no child shall participate in a research or experimentation program if his parents object. The Senate amendment denies funds to institutions which deny parents the right to inspect their children's files and gives parents the right to a hearing to contest their child's school records. The Senate amendment also denies funds to institutions with policies of releasing records, without parental consent, to other than educational officials. Release of records is allowed only upon written parental consent. The Secretary is directed to adopt regulations to protect students' rights of privacy and shall enforce them through an office and review board in the Department of Health, Education, and Welfare to investigate and adjudicate violations.

The conference substitute adopts the provisions of the Senate amendment, including in the list of persons who should have the right to inspect student records those students who attend postsecondary institutions.

An exception under the conference substitute occurs in connection with a student's application for, or receipt of, financial aid. The conferees intend that this exception should allow the use of social security numbers in connection with a student's application for, or receipt of, financial aid.

The conference substitute adds that nothing in these provisions of the Senate amendment shall preclude official audits of federally supported education programs, but that data so collected shall not be personally identifiable. The conference substitute also provides that the consent and rights of the parents of a student transfer to the student at age 18 or whenever he is attending a post-secondary education institution. No action to terminate assistance for violation of these provisions of the Senate amendment shall be taken unless the Secretary finds failure to comply, and that compliance cannot be secured by voluntary means.

The conference substitute also adopts the provisions of the House bill relating to protection of parental and pupil rights, with amendments. The conference substitute provides that all instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by parents or guardians.

In approving this provision concerning the privacy of information about students, the conferees are very concerned to assure that requests for information associated with evaluations of Federal education programs do not invade the privacy of students or pose any threat of psychological damage to them. At the same time, the amendment is not meant to deny the Federal government the information it needs to carry out the evaluations, as is clear from the sections of the amendment which give the Comptroller General and the Secretary of HEW access to otherwise private information about students. The need to protect students' rights must be balanced against legitimate Federal needs for information.

Under the amendment, an educational agency would have to administer a Federal test or project unless the anticipated invasion of privacy or potential harm was determined to be real and significant, as corroborated by a generally accepted body of opinion within the psychological and mental health professions. In short, the amendment is intended to protect the legitimate rights of students to be free from unwarranted intrusions; it is not intended to provide a blanket and automatic justification for a school system's refusal to administer achievement tests and related instruments necessary to the evaluation of an applicable program.

VETO REVEALS WATERGATE BLIND SPOT

Mr. CRANSTON. Mr. President, President Ford's veto of new amendments to strengthen the Freedom of Information Act reveals a second blind spot in his failure to learn the basic lessons of Watergate.

President Ford seemed to have missed the point of the Watergate trials when he pardoned former President Nixon before the legal process was allowed to run its full course.

That was an unpardonable pardon. Our laws must apply equally to each and all of us, including Presidents and former Presidents.

President Ford's ill-advised veto of the Freedom of Information Act amendments is further evidence that he has not grasped still another lesson of Watergate—the dangers of undue secrecy in Government.

The Watergate disclosure showed how public officials and Government bureaucrats try to cover up mistakes, misjudgments and even illegal acts under the cloak of "national security."

Those people were more interested in job security than in national security. They were more concerned about saving their own necks than about safeguarding the Nation.

The President's veto threatens to perpetuate the Nixon style of letting Government bureaucrats manipulate the public by deceiving the press.

We are all aware of recent efforts by administration officials—especially those at the Pentagon, the State Department, the Treasury, and the Office of Management and Budget—to clamp down on so-called "premature" information to the press.

The Freedom of Information Act amendments, which Congress passed earlier this year are designed to broaden public access to Government documents.

We want to speed up the process of getting the Government to respond to legitimate requests for information by members of the public and the press.

Under present procedures, for example, it took 13 months before the Tax Reform Research Group was able to get released to the public earlier this week 41 documents showing how the Internal Revenue Service's Special Services Staff investigated dissident groups.

The amendments also provide for judicial review of disputes over what information could be made public.

This is in keeping with the American tradition of having disagreements settled by a third party—the courts.

I supported the new legislation because I believe in the freest possible flow of information to the people about what their government is doing, and why. The people must have access to the truth if they are to govern themselves intelligently and to prevent people in power from abusing the power.

The legislation has built-in safeguards against the disclosure of classified information that might endanger national security.

The way the President wants the bill to read, a judge would have to assume that a classified document was, and remains, properly classified. If the Government gives the judge a "reasonable" explanation why the document should not be made public, the judge must accept the explanation without looking at the document himself and forming his own opinion.

Only if the Government fails to give this "reasonable" explanation, could the court decide whether the document should be made public.

Under the amendments in the vetoed bill, our courts, not our bureaucrats, will have the final say as to what information can legitimately be kept secret without violating the basic right of a democratic people to know what is going on in their Government.

Arguments over declassifying materials could be conducted privately in the judge's chambers, and if the Government did not like a judge's ruling, it could always of course appeal to a higher court.